

NOTE: As provided in LFC policy, this report is intended for use by the standing finance committees of the legislature. The Legislative Finance Committee does not assume responsibility for the accuracy of the information in this report when used in any other situation.

Only the most recent FIR version, excluding attachments, is available on the Intranet. Previously issued FIRs and attachments may be obtained from the LFC office in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR: HJC DATE TYPED: 02/12/02 HB CS/26/aSJC

 RT TITLE: Sentencing of Habitual Offenders SB _____

ANALYST: Wilson

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY02	FY03	FY02	FY03		
		\$0.1	See Narrative	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Public Defender Department (PDD)
 Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (ADA)

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee Amendment to the House Judiciary Committee Substitute for House Bill 26 adds “parole” to the period of time that will be used to calculate the elapsed time from a previous felony.

Synopsis of Substitute Bill

HB 26/HJCS allows judges to suspend or defer mandatory habitual offenders incarceration time for first, second, and third time prior felony offenders if the judge makes a specific finding that the prior felony conviction and the instant felony conviction are both for nonviolent felony offenses and that justice will not be served by imposing a mandatory sentence of imprisonment and that there are substantial and compelling reasons, stated on the record, for departing from the imposition of an additional year as demanded by this bill.

HB 26/HJCS defines a “nonviolent felony offense” as meaning that an application of force, threatened use of force or a deadly weapon was not used by the offender in the commission of the offense. The bill also expands the circumstances of what a “prior felony conviction” means.

Significant Issues

The PDD states that HB 26/HJCS allows judicial discretion over sentencing based upon evidence presented in an open public courtroom. It prevents sentencing abuse by prosecutors who use habitual penalties to force guilty pleas to send too many non-violent offenders to prison.

The AOC states that HB 26/HJCS will give the court more discretion to determine the offender's sentence. The court must make a specific finding that justice will not be served by imposing a mandatory sentence of imprisonment and that there are substantial and compelling reasons, stated on the record, for departing from the sentence imposed pursuant to this statute.

FISCAL IMPLICATIONS

The ADA states that the DAs' Offices would experience an increase in hearings by the court, thus requiring additional preparation by District Attorney staff to determine imposition, suspension, or deferral of incarceration of habitual offenders. In addition, there would likely be an increase in the Adult Probation caseload, due to mandatory time not being imposed. This would result in the need for additional DA personnel, additional judges due to increases in courtroom hearings, and additional probation officers.

The PDD explains that under existing law, the accused has no reason to enter into a "plea" with the state if he is facing mandatory "habitual time" that the judge has no authority to suspend. Pleas are the most cost effective method of administering justice, but the current law drives cases to trial. A plea saves the court time and the taxpayer the expense of costly trials. This legislation obviously contemplates a plea and a subsequent sentencing where the accused hopes to convince the judge that habitual time be suspended or deferred. The burden upon this department to produce credible evidence on behalf of clients increases. Such mitigation evidence includes expert testimony as well as investigative and social worker reports, but the costs are shifted from trial into a sentencing hearing.

The AOC believes HB 26/HJCS will likely have a positive fiscal impact on the courts because the courts will have more discretion in sentencing defendants and perhaps there will be more plea agreements and fewer trials and visits to the court. This bill could also result in a decrease of prison costs if judges exercise their discretion and not sentence defendants to additional prison terms.

ADMINISTRATIVE IMPLICATIONS

The ADA claims the DAs' offices would need additional support, but the ADA has not quantified the exact number of FTEs needed nor what additional support will be required.

OTHER SUBSTANTIVE ISSUES

The ADA has offered the following:

- Career criminals commit 70% of the crime in New Mexico. Elimination of mandatory time will decrease the quality of life in communities where career criminals operate.
- The deterrent effect of mandatory time will be significantly reduced for career criminals.
- Crime is likely to increase in New Mexico if repeat offenders avoid mandatory time.

The PDD disagrees with the prosecutors and believes that rational judicial discretion exercised in a public courtroom will result in violent offenders going to prison. Defense advocates do not

believe that judges will be inappropriate in their application of discretion. Prosecutors also fear the loss of total control over sentencing, but there are instances of irrational prosecutorial use of habitual penalties.

DW/ar